

LAW OFFICES
KOTEEN & NAFTALIN, L.L.P.

1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
HERBERT D. MILLER, JR.
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
M. ANNE SWANSON
CHARLES R. NAFTALIN
GREGORY C. STAPLE
*SENIOR COUNSEL

April 19, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom) are an original and eleven copies of "Comments for TDS Telecommunications Corporation" in the above-referenced matter.

In the event of any questions about this matter, please communicate with the undersigned.

Very truly yours,



Margot Smiley Humphrey

Enclosure

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

DOCKET FILE COPY ORIGINAL

Margot Smiley Humphrey
KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

April 19, 1996

Summary

TDS Telecom supports the comments filed by the Rural Telephone Coalition. It is appropriate to add the language of § 254(g) to the FCC's rules and rely on states to require rate averaging, as long as their requirements satisfy the Act and are consistent with the FCC's rules. However, the Commission must adopt adequate monitoring and enforcement measures, rather than relegating customers to filing complaints based only on vague certifications, while eliminating tariff requirements that provide necessary rate information, without adequate replacement. The FCC should also subject intrastate services to its rules if a state is not in full compliance within the six-month implementation period.

Certification should be subject to federal perjury laws, and the complaint process should facilitate customer and competitor enforcement and award damages back to when a violation began. Moreover, to satisfy the deaveraging mandate, while forbearing from interexchange tariff regulation, the FCC must buttress its information and complaint mechanisms by requiring bulk-billing of DEM weighting and using its universal service authority to reduce the rural access charge disparities that fuel deaveraging incentives. The rules must also require every interexchange carrier to provide and advertise all discount and other calling plans or contracts throughout its area and use its Section 214 authority to prevent evasion of averaging by leaving or avoiding high cost rural routes.

**Before the
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COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS or TDS Telecom) responds in these comments to the Commission's March 25, 1996 Notice of Proposed Rulemaking (FCC 96-123) in the above-captioned proceeding. TDS Telecom supports and elaborates briefly on the positions presented and supported in comments to be filed today in this proceeding by the Rural Telephone Coalition (RTC).

The Commission proposes to implement the 1996 Act, in part, with regard to (a) interexchange rate averaging, designed to keep rural rates no higher than urban rates, and (b) rate integration, designed to keep rates within the uniform nationwide structure that averages interstate rates across state boundaries. The NPRM proposes to add the statutory requirements to its rules. The NPRM would also reduce FCC enforcement capabilities (§§ 19, 70); defer to states as long as their requirements for rate averaging are consistent with the Act and the FCC's rules (§ 68); and decide whether the same discounts and other interexchange calling plans are or should be available throughout each interexchange service provider's serving areas (§ 72).

The NPRM proposal (§§ 67, 76) to incorporate the statutory rate averaging and rate integration language into its rules is a good foundation for the rulemaking. This step is entirely appropriate, since Congress has already made the basic policy decision here.

The Commission's proposal (§ 68) to defer to the states with respect to intrastate rate averaging issues, so long as the states' rules are not inconsistent with the rules it adopts here, is also a sound beginning point. TDS Telecom understands and applauds the Commission's wish to avoid unnecessary preemption. However, if a state fails to require the rate averaging and availability of interstate services required by the Act, the Commission should immediately exercise the preemptive jurisdiction conferred by the new law. The RTC's proposal to make the Commission rules adopted here applicable to intrastate interexchange services is a reasonable approach. Thus, the federal requirements should be expressly and automatically made applicable by the rules if a state's rules are not in full compliance with Section 254(g) and the rules when the Act's six-month implementation period expires.

The most serious shortcoming in the Commission's implementation proposal is that it cannot realistically be enforced. The proposal is to rely on carrier certification of compliance and the Commission's complaint process. However, the Commission simultaneously proposes to detariff interexchange services under the Act's forbearance section (§ 401), which

denies the Commission, customers, access providers and interexchange competitors the fundamental information necessary to uncover abuses and support their complaints. A perfunctory certification requirement that cannot be externally validated is an insufficient tool to implement an unequivocal Congressional directive for the Commission to "adopt rules to require" rate averaging and rate integration.

As the RTC suggests, a far stronger enforcement mechanism is necessary. Periodic certification by an officer of the carrier should be required, but a) made subject to the penalties for perjury in the U.S. Criminal Code, b) accompanied by adequate, readily available public information that demonstrates ongoing compliance and c) buttressed by universal service measures to reduce the incentives for interexchange deaveraging the law is meant to counteract. Otherwise, expecting the complaint process to police the statutory requirement, while eliminating the current publicly available rate information in tariffs, amounts to agency repeal of the rate averaging and rate integration mandate.¹

The complaint process should also be made more user-friendly to protect interexchange customers, as Congress intends. Since information on comparative rates and optional calling plan

¹Once the public information requirement and enforcement mechanisms have been demonstrated to be sufficient, the Commission could explore the adequacy of requiring independent audits and auditors' certifications and information availability directly from carriers to reduce government involvement.

availability may remain difficult to obtain, the test for presenting a prima facie case by complaint must not be high. A complaint will be self-defeating if specific information about violations is required, but is not available to the complainant. Discovery should be readily available to probe alleged deaveraging (including calling plan unavailability). Since competitors could face competitive harm from undetected abuses by competing interexchange providers, they must also be able to complain of deaveraging. And damages should be assessed to make restitution to customers from whenever the failure to average began.

Congress has made it clear (Managers' Explanation at 132) that all discount plans and arrangements are to be available nationwide and that any exception from averaging must meet the forbearance standards. The required certifications and public rate information must, therefore, also demonstrate the availability of such plans and contracts throughout the interexchange carrier's service area. Complaints and damages should also be handled as discussed above for this variation on deaveraging.

Finally, it will clearly undermine the law and underlying intent if mandatory rate averaging motivates interexchange providers to exit or decline to enter rural markets. Consequently, to prevent carriers from neglecting or withdrawing from high cost service areas in order to avoid averaging them with lower cost areas, the Commission must enforce its Section

214 authority over discontinuing or impairing service and, if necessary, to require service. As the RTC explains, to make averaging work in an era of decreasing regulation and increasing pressures to deaverage, the Commission should also use its pricing and universal service authority to require bulk-billing of DEM weighting and reduce eligible carriers' interstate and intrastate access charge disparities that encourage deaveraging. These actions will be effective because they attach deaveraging incentives at their roots.

Unless the averaging mandate is made enforceable and included in universal service recovery, as we urge, the RTC is correct that tariff forbearance lacks the required supporting findings that rates and consumers will be protected and forbearance is in the public interest. Indeed, pursuing the Commission's suggestion (§ 69) that it may be justified at some point in total or partial forbearance from the rate averaging mandate itself would fly in the face of the Act's universal service principles and rate averaging policy and ignore the bidding of Congress.

Accordingly, TDS Telecom urges the Commission to (1) require interstate and intrastate rate averaging and rate integration, including service-area-wide discount and calling plans and contracts; (2) require adequate public rate information and ease complaint procedures to facilitate monitoring and enforcement; (3) require regular compliance certifications by company officers and subject to penalties for perjury; (4) use its Section 214

authority to ensure comparable access to interexchange services for rural customers (§ 254(b)(3)); and (5) apply its rules to intrastate interexchange services in any state where consistent requirements and enforcement measures are not in effect within the six-month implementation period set by Congress in Section 254(g).

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION

Margot Smiley Humphrey

By: /s/ Margot Smiley Humphrey
Margot Smiley Humphrey

Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700

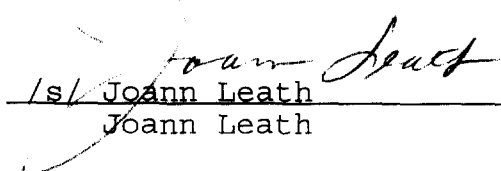
April 19, 1996

CERTIFICATE OF SERVICE

I, Joann Leath, a secretary in the law firm of Koteen & Naftalin, L.L.P., certify that a true and correct copy of the foregoing "Comments of TDS Telecommunications Corporation" was served on this date on the following persons.

Janice Myles*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, Room 544
Washington, D.C. 20554

International Transcription Service, Inc.*
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037



/s/ Joann Leath
Joann Leath

*by hand

April 19, 1996